REMARKS

Summary of Office Action

As an initial matter, Applicants note that the Examiner has failed to indicate consideration of the Second Supplemental Information Disclosure Statement filed December 13, 2006. Accordingly, the Examiner is respectfully requested to indicate consideration of the Second Supplemental Information Disclosure Statement filed December 13, 2006 by returning a signed and initialed copy of the Form PTO-1449 submitted therein with the next communication from the Patent and Trademark Office.

Applicants note with appreciation that the Examiner has withdrawn the rejection of claims 18-43 under 35 U.S.C. § 112, first paragraph, set forth in the previous Office Action.

Claims 18-24, 28-31, 34, 36-39, 42 and 43 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bellon et al., FR 2,789,397 (hereafter "BELLON").

Claims 25-27, 32, 33, 40 and 41 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON and further in view of Snyder, U.S. Patent No. 4,708,813 (hereafter "SNYDER").

Claim 35 remains rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON in view of Saint-Leger et al., U.S. Patent No. 5,939,077 (hereafter "SAINT-LEGER").

Claims 18-22, 28-33, 35, 42 and 43 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Beutler et al., U.S. Patent No. 4,404,388 (hereafter "BEUTLER").

Claim 42 remains rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Penska et al., EP 0 938 890 (hereafter "PENSKA").

Claim 42 is newly rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Marilyn et al., WO 92/16188 (hereafter "MARILYN").

Claims 18-41 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 15-34 and 43 of Application No. 10/469,695; claims 16-31, 34, 35, 45, 47 and 48 of Application No. 10/469,696; claims 17-32, 35, 36, 47 and 48 of Application No. 10/469,697; claims 14-29, 32, 33, 42 and 43 of Application No. 10/469,698; and claims 13-28, 31, 32 and 40 of Application No. 10/469,074.

Claim 42 remains provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 15-17 of Application No. 10/760,088.

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the following remarks.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over BELLON

Claims 18-24, 28-31, 34, 36-39, 42 and 43 are again rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON for the same reasons that have already been set forth in the previous Office Action. The rejection again relies mainly on Example 1 of BELLON and alleges that this example discloses a facial foam composition which comprises 22 % by weight of PEG-100 stearate glyceryl stearate (allegedly corresponding to emulsifier B according to the present claims), 12 % by weight of stearic acid (corresponding to emulsifier A according to the present claims) and 6

% by weight of octyldodecanol (corresponding to co-emulsifier C according to the present claims) as well as 70 % by volume of nitrogen. The rejection concedes that BELLON does not exemplify a preparation wherein the total amount of emulsifiers A, B and C is from 2 to 20 % by weight of the preparation but essentially alleges that it would have been obvious for one of ordinary skill in the art to provide a corresponding preparation.

Applicants respectfully traverse this rejection for the same reasons that have already been set forth in the responses to the previous Office Actions and are incorporated herein in their entirety.

Applicants note that the Examiner maintains the position that the "PEG-100 stearate glyceryl stearate" used in Example 1 of BELLON is a polyethoxylated fatty ester which falls within the definition of emulsifier B recited in the present independent claims. In this regard, it is again pointed out that the substance used in Example 1 of BELLON is not merely PEG-100 stearate, but PEG-100 stearate glyceryl stearate, the specific structure of which is unknown to Applicants. That this substance is not a conventional, readily available compound is clear from the fact that in Example 1 of BELLON it is indicated that the substance is marketed by the company SEPPIC. This would apparently be unnecessary if PEG-100 stearate glyceryl stearate were readily available from a number of commercial sources (as this is the case with PEG-100 stearate).

Applicants further note that with respect to Applicants' argument that even if one were to assume, *arguendo*, that "PEG-100 stearate glyceryl stearate" is within the scope of the definition of emulsifier B as recited in the present claims, the total amount of emulsifiers A to C according to Example 1 of BELLON would be 40 % or at least about 33 %, respectively (if one takes into account that the amounts of Example 1 of BELLON add up to significantly more than 100 %), at page 6, last paragraph of the present Office Action the Examiner takes the position that this argument has not

been found persuasive "because the percentage weights Applicants is relying upon is not the composition as a whole, but the composition without nitrogen".

In this regard, Applicants point out that nitrogen is a gas and as such cannot reasonably be assumed to significantly change the relative concentrations of the remaining components of the composition of Example 1 of BELLON. It further is noted that according to page 6 of the English language translation of BELLON the gas occupies from 10 to 90 % by volume of the compositions disclosed therein. The specific composition of Example 1 contains 70 % by volume of nitrogen, i.e., a negligible amount in terms of weight.

Applicants further note that the Examiner alleges that "Bellon also teaches that the lipophilic phase, of which the emulsifiers are encompassed, comprise 5-25% of the composition as a whole." If this were correct, the composition of Example 1 of BELLON (of which at least about 33 % would be lipophilic phase under the definition adopted by the Examiner) would be far outside the general disclosure of BELLON, which is an additional reason why one of ordinary skill in the art would not be motivated to optimize the ratios of Example 1 in any way.

It is further point out again that BELLON does not even discuss the compounds which in the Examiner's opinion correspond to the present emulsifiers A, B and C in combination, let alone as an emulsifier system, but mentions them separately and for different purposes and that the intended purpose of the third component of interest of Example 1 of BELLON, i.e., octyldodecanol, does not appear to be identified, let alone discussed, in BELLON at all.

Applicants submit that at least for all of the foregoing reasons and the additional reasons set forth in the responses to the previous Office Actions, BELLON fails to render obvious the subject matter of any of the claims submitted herewith. Accordingly, withdrawal of the rejection under 35

U.S.C. § 103(a) over BELLON is again respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over BELLON in View of SNYDER or SAINT-LEGER

Dependent claims 25-27, 32, 33, 35, 40 and 41are again rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON in view of SNYDER or in view of SAINT-LEGER.

These rejections are respectfully traversed again. Neither SNYDER nor SAINT-LEGER cure any of the deficiencies of BELLON set forth above and for this reason alone, a combination of the teachings of BELLON and SNYDER or SAINT-LEGER fails to render obvious the subject matter of any of the present claims

For at least the reasons set forth above, withdrawal of the rejection under 35 U.S.C. § 103(a) over BELLON in view of SNYDER or SAINT-LEGER is again respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 102(b) over BEUTLER

Claims 18-22, 28-33, 35, 42 and 43 are again rejected under 35 U.S.C. § 102(b) as allegedly being anticipated BEUTLER for the same reasons that are set forth in the previous Office Action. In this regard, the rejection again appears to rely on Example 7/2 of BEUTLER, although from the comments at page 10 of the present Office Action it appears that the Examiner concedes that the composition of Example 7/2 does not contain an emulsifier B as recited in the present claims. In this regard, the Examiner appears to rely on Example 4/2 of BEUTLER which comprises PEG-9 stearate as non-ionic emulsifier.

Applicants respectfully traverse this rejection as well. Specifically, while it is correct that Example 4/2 of BEUTLER comprises PEG-9 stearate, i.e., a compound which qualifies as emulsifier

B as recited in the present claims, it is pointed out that the composition of Example 4/2 does not appear to comprise a compound which qualifies as emulsifier A according to the present claims (i.e., a fatty acid). Moreover, the compositions of Examples 4/2 and 7/2 of BEUTLER differ significantly in a number of other aspects (components), wherefore one of ordinary skill in the art will not assume that the non-ionic emulsifier of Example 7/2 of BEUTLER (2 % by weight of ceteareth-12) is freely interchangeable with the non-ionic emulsifier employed in Example 4/2 of BEUTLER (6 % by weight of PEG-9 stearate).

Applicants point out that the Examiner has still not pointed out a single specific composition of BEUTLER which can be considered to be encompassed by any of the rejected claims, nor has the Examiner pointed to any facts which would prompt one of ordinary skill in the art to replace the ceteareth-12 used in Example 7/2 of BEUTLER by a compound which belongs to a different class of compounds and specifically, an emulsifier B as recited in the present claims. For these reasons alone (and for the additional reasons set forth in the responses to the previous Office Actions which are incorporated herein in their entirety) the rejection of claims 18-22, 28-33, 35, 42 and 43 under 35 U.S.C. § 102(b) over BEUTLER is apparently without merit, wherefore withdrawal thereof is again respectfully requested.

Response to Rejection of Claim 42 under 35 U.S.C. § 102(b) over PENSKA

Claim 42 remains rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by PENSKA. In this regard, the rejection again relies on Examples 6 and 7 of PENSKA.

Applicants again respectfully traverse this rejection. It is noted that in response to Applicants' arguments set forth in the reply to the previous Office Action, at the bottom of page 11 of the present

Office Action the Examiner alleges that because the compositions by PENSKA comprise fluorocarbons infused with carbon dioxide they will inherently be self-foaming and/or foam-like.

Applicants respectfully submit that PENSKA does not contain the slightest indication that the oil-in-water emulsions of Examples 6 and 7 of PENSKA are self-foaming and/or foam-like, and neither has the Examiner provided any (written) support for the allegation that a (any) composition which comprises (30 to 50 % by weight of) fluorocarbons infused with carbon dioxide will necessarily be self-foaming and/or foam-like.

At any rate, even if one were to assume, *arguendo*, that the compositions of Examples 6 and 7 of PENSKA are self-foaming or foam-like, the Examiner has not provided any evidence that would it make reasonable to assume that these compositions are self-foaming and/or foam-like due to the presence of emulsifiers A to C present therein. In other words, the Examiner has not provided any arguments and/or evidence to the effect that these compositions would not be self-foaming and/or foam-like without the presence of emulsifiers A to C (Applicants note that the Examiner takes the position that these compositions are inherently self-foaming and/or foam-like merely for the reason that they contain fluorocarbons infused with carbon dioxide). In this regard, the Examiner is reminded that present claim 42 is drawn to a method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient wherein the preparation is rendered self-foaming and/or foam-like by incorporating therein from 2 to 20 % by weight of the emulsifiers A to C recited in present claim 42.

Applicants submit that at least for all of the foregoing reasons, withdrawal of the rejection of claim 42 under 35 U.S.C. § 102(b) over PENSKA is warranted, which action is respectfully requested.

Response to Rejection of Claim 42 under 35 U.S.C. § 102(b) over MARILYN

Claim 42 is newly rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by MARILYN. The rejection mainly relies on Example I of MARILYN which is directed to an instant foaming aerosol shave foam which comprises, *inter alia*, palmitic acid, stearyl alcohol and PEG-150 stearic acid ester as well as a propellant.

This rejection is respectfully traversed as well. Specifically, the composition of Example 1 of MARILYN does not contain an emulsifier B as recited in claim 42. In this regard, Applicants point out that PEG-150 stearic acid ester apparently is not a polyethoxylated fatty acid ester having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 or an ester of a fatty acid having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units.

Further, even if one were to assume, for the sake of argument, that PEG-150 stearic acid ester qualifies as emulsifier B, it is pointed out that the Examiner has not provided any arguments and/or evidence to the effect that the composition of Example 1 of MARILYN would not be self-foaming without the presence of emulsifiers A to C. The Examiner is again reminded that present claim 42 is drawn to a method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient wherein the preparation is rendered self-foaming and/or foam-like by incorporating therein from 2 to 20 % by weight of the emulsifiers A to C recited in present claim 42.

Applicants submit that at least for all of the foregoing reasons, withdrawal of the rejection of claim 42 under 35 U.S.C. § 102(b) over MARILYN is warranted as well, and respectfully requested.

Response to Provisional Rejections of Claims under Doctrine of Obviousness-Type Double Patenting

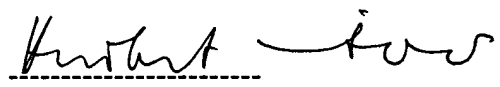
Claims 18-42 are again provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over several claims of Application Nos. 10/469,695; 10/469,696; 10/469,697; 10/469,698; 10/469,074 and 10/760,088.

Applicants again respectfully request that these rejections be held in abeyance until the Examiner has indicated allowable subject matter. Applicants will then decide whether it is necessary to file Terminal Disclaimers in the present application.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Heidi RIEDEL et al.



Neil F. Greenblum
Reg. No. 28,394

March 22, 2007
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Heribert F. Muensterer
Reg. No. 50,417